

PT 03-22

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**NEW WINE FELLOWSHIP
Applicant**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**A.H. Docket # 03-PT-0022
Docket # 01-54-18
Parcel Index # 54-08-030-034-00**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. George Logan, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was conducted to determine whether Logan County Parcel Index No. 54-08-030-034-00 qualified for exemption during the 2001 assessment year.

Shirley Barry, treasurer of New Wine Fellowship, (hereinafter referred to as the "Applicant") was present and testified on behalf of applicant.

The issue in this matter is whether the parcel was used or sufficiently adapted by the applicant for religious purposes to qualify for a property tax exemption in the 2001 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Logan County Parcel Index No. 54-08-030-034-00 did not qualify for a property tax exemption for the 2001 assessment year were established by the admission into evidence of Dept. Ex. No. 1. The property is a 3.66 acre parcel. (Tr. p. 5)

2. The Department received the request for exemption of the subject parcel from the Logan County Board of Review. The board recommended denying exemption because the property was found not to be in exempt use. The Department agreed with the Logan County board and denied the requested exemption finding that the property was not in exempt use. (Dept. Ex. No. 1)

3. I take administrative notice of the decision rendered in Docket No. 00-PT-0043 for the subject property wherein it was decided that there was not sufficient adaptation of the subject parcel to qualify for a religious property tax exemption in the 1999 and 2000 assessment years.

4. I take administrative notice of the fact that the applicant has been granted religious use property tax exemptions pursuant to Docket Nos. 85-54-5 and 96-54-9 for properties and for tax years other than the one at issue.

5. Applicant acquired the property in 1999 to construct its new church building. When the property was purchased it was vacant land. Applicant's total expenses for the property at the end of 2001 were \$19,818.29. Included in those expenses were fees paid to an engineering company, a publicity sign service, and a counseling service. (Applicant's Ex. Nos.

1-6)

6. Applicant has chosen to erect the church in phases. Applicant has chosen to proceed in phases so that the church can be completed without having to take out a loan or mortgage. Applicant, at the time of the hearing, had collected \$537,000, plus the purchase price of the land, \$123,000, for the project. Applicant estimates it will need to collect at least another \$200,000 to complete the project. (Applicant's Ex. No. 6; Tr. pp. 16-18)

7. Applicant's building committee, over the years, has changed its mind about the type of structure to be put on the subject property. At the time of the hearing a steel building was preferred. "So phase two, we believe, is right now where we're at with picking the actual structure to go up, making sure the architectural plans are right and setting the foundation." "Um, we have been told that construction is not a quick thing unless you get one of the prefabs. We don't want a prefab." (Tr. pp. 12, 15)

8. Phase I includes the preparation of the land and "foundational things which was the entrance and water easement to get to the property." Phase I was completed in 2003. (Tr. pp. 11-12)

9. As of the date of the hearing, which occurred in September 2003, applicant has constructed a street entrance to the property. (Applicant's Ex. Nos. 2, 3; Tr. pp. 8, 11, 14)

10. As of the date of the hearing, applicant has a building committee that is working with the architectural plans. (Tr. p. 12)

11. Phase II includes picking the actual structure to put on the property, putting the architectural plans in motion, and erecting the actual foundational part of the building. Phase III includes finishing the building and landscaping. Applicant anticipates that the actual building part of phase II will begin in the spring of 2004 and could take a year to complete. (Tr. pp. 13-

16)

12. The consulting service applicant hired works with the Departments of Transportation and Environmental Protection to ensure compliance with the laws. (Tr. p. 12)

13. There are no religious services being held on the property. Maintenance men are maintaining the property and working on the curbs. (Tr. p. 14)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. At issue is the religious exemption found at 35 ILCS 200/15-40.

That portion of the statutes exempts certain property from taxation in part as follows:

§ 15-40. Religious purposes, orphanages or school and religious purposes. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt. . . .

Pursuant to Docket Nos. 85-54-5 and 96-54-9 the Department has determined that the applicant is a religious organization that qualified for property tax exemptions for religious use of properties other than the one at issue.

The issue herein is whether there was sufficient adaptation of the subject property by the applicant for religious use in 2001 to qualify for exemption. Illinois Courts have consistently held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); Weslin Properties Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987) and Lutheran Church of the Good Shepherd of Bourbonnais v. The Department of Revenue, 316 Ill.App.3d 828 (3rd Dist. 2000).

Weslin, a case about adaptation with facts similar to those at bar, concerns the construction of a multi-million dollar hospital. In 1980 Weslin began to study ways to expand and continue its provision of health services. In 1981 it employed long-range planning consultants who recommended buying the 30-50 acres for the planned construction. In 1982 a second consultant was hired to make in depth studies of health care needs and a financial feasibility study. In 1983, Weslin's board recommended buying the 24.309 acres; the board approved the purchase for \$2,197,000.00; Weslin met with architects to develop a master site plan and schematic drawings; an ad hoc planning committee approved the plan; and the physical adaptation of the property was begun with landscaping and the construction of berms. In 1984 the construction manager was hired, the final design and changes were completed, and the ground breaking ceremony was held. The urgent care center was completed in 1985. The court found that there was sufficient development and adaptation to grant the exemption for the urgent care center for 1983.

In Lutheran Church of the Good Shepherd, *supra*, the Church had purchased land next to its exempt Church for use as additional churchyard and recreational areas. The court found that the church had ceased its leasing of the property for planting agricultural products and the parcels had been mowed and tilled for planting grass seed for those specific purposes. The court found that to be sufficient adaptation for granting a property tax exemption as religious use of the property.

The applicant herein has significantly less adaptation and development in 2001 than was shown in either Weslin or Lutheran Church of the Good Shepherd. Although applicant's property was purchased in August 1999, the applicant was still not sure what type of building would be on the property on the day of the hearing in 2003.

The only thing completed on the property by the day of the hearing in 2003 was the street entrance. However, even this entrance was not on the property in 2001, the tax year at issue. No religious activities take place on the property. It is a construction site with maintenance men maintaining it and constructing curbs. As of the date of the hearing, the applicant has not raised sufficient funds to complete the project.

Applicant, at the prior hearing for this same parcel, pursuant to Docket No. 00-PT-0043, submitted what it called final architectural plans. However, as of the date of the hearing in this matter, applicant testified that it was still unsure about the specific structure that would be erected on the property and applicant's building committee was still working with the architectural plans. Again, in Docket No. 00-PT-0043, applicant anticipated construction to begin in August 2001. That has not happened. According to testimony in the recommendation issued in Docket No. 00-PT-0043, the cost of phase I was anticipated to be \$2.3 million. Now applicant thinks the project may cost \$800,000. I find that applicant's use of the property during

2001 was a speculative rather than a specific use for exempt purposes as illustrated in Weslin and Lutheran Church of the Good Shepherd.

In the future, applicant intends to use the subject parcel for its sanctuary and related uses. In the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt from taxation.

For the foregoing reasons, it is recommended that Logan County Parcel Index No. 54-08-030-034-00 remain on the tax rolls for 2001

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: November 25, 2003